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The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH W. LANGAN

Appeal No. 1996-1211
Application 08/173,083¹

ON BRIEF

Before CAROFF, WILLIAM F. SMITH and OWENS, Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

¹ Application for patent filed December 27, 1993.

Appeal No. 96-1211
Application 08/173,083

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 13-19, and 21-33, which are all of the claims pending in this application. Claims 13, 15, 16, 17, 25, and 30 are illustrative of the subject matter on appeal and read as follows:

13. A method of making an assembly of linerless labels comprising the steps of:

(a) forming a linerless label web by printing indicia on a first face of a web of label stock and coating the first face with a pressure sensitive adhesive release material, and coating a second face of the web of label stock with a pressure sensitive adhesive;

(b) die-cutting a plurality of non-quadrate configuration labels from said web and

(c) taking up the plurality of non-quadrate configuration labels in an assembly form in which the plurality of labels are readily releasably connected to each other.

15. A method as recited in claim 13 comprising the further step (d) between steps (b) and (c), of separating the die cut labels from each other and the web, and wherein step (e) is practiced by shingling the labels so that a portion of the pressure sensitive adhesive on one label engages a portion of the release material on an adjacent label, the shingled labels completely linerless.

16. A method as recited in claim 15 wherein step (c) is further practiced by taking the shingled labels up in a roll form.

17. A method as recited in claim 13 wherein step (b) is practiced to provide a plurality of label stock ties connecting each label to surrounding matrix material of the web or another label, and wherein step (c) is practiced by taking up the matrix material and die-cut webs in linerless roll form.

25. A method as recited in claim 13 wherein steps (a) and (b) are practiced so as to provide labels with exposed adhesive over the entire second faces thereof.

30. A method as recited in claim 25 wherein step (b) is practiced to provide a plurality of label stock ties connecting each label to surrounding matrix material of the web or another label; and wherein step (c) is practice by taking up the matrix material with die-cut webs in roll form.

The references relied upon by the examiner are:

Bane	5,324,078	June 28, 1994 (Filed Dec. 28, 1992)
Lane	2,170,147	Aug. 22, 1939
Lacy	4,959,115	Sep. 25, 1990

Claims 13-19 and 21-33 are rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Bane, Lane, and Lacy. We affirm the rejection of claims 13-16, 18-20, 22, 23, 25-29, 32 and 33. We reverse the rejection of claims 17, 21, 24, 30, and 31.

DISCUSSION

We initially note that appellant has separately argued the patentability of the following groups of claims:

Group I includes claims 13, 14, and 19;

Group II includes claims 15, 18, and 22;

Group III includes claims 17, 21, and 24;

Group IV includes claims 16 and 23;

Group V includes claims 25, 26, 27, 28, 29, 32, and 33; and

Group VI includes claims 30 and 31 (Appeal Brief, page 3).

The examiner agreed with these groupings (Examiner's Answer, page 2).

1. Group I

Claim 13 is representative of this group. Accordingly, the patentability of the remaining claims in this group stands or falls with claim 13.

Bane teaches a method of making an assembly of linerless labels which comprise forming a linerless label web, printing indicia (17) on a first face of a web of label stock and coating the first face with a release material (24). The second face of the web is coated with a repositionable adhesive (18).² The labels are provided in an assembly form in which the plurality of labels are readily releasably connected to each other in shingled configuration in roll form as shown in Figure 1. Bane differs from the subject matter of claim 13 in two significant aspects. First, Bane does not specify how the labels in the shingled roll were cut. Second, the labels as illustrated in the drawings of Bane are quadrate rather than non-quadrate.

As to the first difference, we note that the shingled labels in the roll illustrated in Figure 1 are precut. However, the disclosure of Bane does not indicate which technique was used to precut the labels. The examiner relies upon Lacy as evidence that the labels were conventionally precut from stock sheet using a die prior to the present invention. See, e.g.,

² The repositionable adhesive (18) of Bane corresponds to the pressure sensitive adhesive on the second face of the claimed label. See page 4, lines 29-30 of the supporting specification (Pressure sensitive adhesive may be a repositionable adhesive).

column 1, lines 29-40. To implement the teachings of Bane, one would obviously have to select a cutting method. In so doing, one would typically choose a method which has previously been used in precutting labels from a stock supply. Lacy indicates that die cutting is one such conventional method. On this basis, we find no error in the examiner's conclusion that one of ordinary skill in the art would have found it obvious, in implementing the teachings of Bane, to precut the labels of Bane using a die cutting method as suggested by Lacy. Appellant does not dispute this portion of the examiner's case. See the paragraph bridging pages 6-7 of the Appeal Brief.

Rather, the main issue in this appeal concerns the second difference identified above. As mentioned, the labels illustrated in Bane are quadrate. Claim 13 requires non-quadrate labels. In order to make up or account for this difference, the examiner relies upon Lane.

Lane describes and illustrates precut stacked or shingled labels which may be quadrate (Figs. 4 and 5) or non-quadrate (Figs. 6 and 7). Lane provides evidence of a fact of which most would readily admit: prior to the present invention, labels came in many sizes and shapes, including quadrate and non-quadrate. The disclosure of Bane places no limit on the shape of the labels which can be produced by using the teachings of that reference. We view the illustration of quadrate labels in the figures of Bane as exemplary only and not limiting in any sense. The precise shape of a label depends upon many

factors, both functional and aesthetic. In view of the evidence provided by Lane, we agree with the examiner that one of ordinary skill in that art would have found it obvious to use the method of Bane to produce non-quadrate labels.

Appellant argues at page 6 of the Appeal Brief that “Certainly, if the Bane labels were cut to be non-quadrate they would be destroyed, all or most of the adhesive strip and release stripping cut off.” In making this argument, appellant is referring to adhesive strip (19) and release strip (22) of Bane. These strips are in addition to the adhesive and release coatings identified above which correspond to those required by claim 13 on appeal. As we understand appellant’s position in this regard, it appears to be that one of ordinary skill in the art would need to take the quadrate label of Bane as illustrated in Figs. 2 and 3 and die cut a non-quadrate label therefrom. In so doing, we understand appellant to be arguing that the resulting non-quadrate label would not necessarily retain sufficient of strips (19) and (22) so that they would be capable of performing their disclosed function. If this is appellant’s position, it misapprehends the basis of the examiner’s rejection and is premised upon a too narrow reading of the prior art.

Having decided to produce a non-quadrate label using the teachings of Bane as suggested by Lane, one of ordinary skill in the art would have produced a roll of precut, non-quadrate labels in the form illustrated in Fig. 1 of Bane for quadrate labels. In so doing, it is quite clear that the precise shape and area encompassed by strips (19) and

(22) would have to be adjusted to conform to the new shape. Lane provides evidence that the level of skill in this art was sufficient at the time of the present invention to adapt a given scheme of adhesive/release agents to a variety of label shapes including quadrate and non-quadrate shapes.

From the above analysis, it should be clear that we disagree with appellant's argument at page 9 of the Appeal Brief that it is necessary to eliminate strips (19) and (22) from Bane if one is to produce a non-quadrate label using the teachings of that reference. In our view, one of ordinary skill in the art would simply adjust the size and shape of these strips to accommodate the non-quadrate shape.

The rejection of claims 13, 14 and 19 is affirmed.

2. Group 2

Claim 15 is representative of this group and requires the additional steps of (d) separating the die-cut labels from each other and the web, and (e) shingling the labels so that a portion of the pressure sensitive adhesive on one label engages a portion of an adjacent label, the shingled labels completely linerless. Appellant argues that the teachings in Lane are specifically contrary to what is required by claim 15 (Appeal Brief, paragraph bridging pages 9-10).

It is Bane, not Lane, which describes the shingled format required by claim 15. See Figure 1 of Bane. Area (26) of the roll of precut labels of Bane is shingled in a manner in

which a portion of adhesive (18) engages release agent (24). This is seen in that area (26) must be sufficient so that strips (19) and (22) do not engage when the labels are shingled. See column 3, lines 37-49 of Bane.

The rejection of claims 15, 18, and 22 is affirmed.

3. Group 3

Claim 16 is representative of this group and requires the additional limitation that step c) is further practiced by taking the shingled layers up in a roll. Appellant argues that the teaching of Lane is contrary to what is recited in claim 16 (Appeal Brief, Paragraph bridging pages 9-10). However, Bane, not Lane, expressly teaches that the labels can be taken up in roll form. See Figure 1. We find no error in the examiner's conclusion that the subject matter of claim 16 would have been obvious to one of ordinary skill in the art.

The rejection of claims 16 and 23 is affirmed.

4. Group 4

Claim 17 is representative of this group and requires that step b) is practiced to provide a plurality of label stock ties connecting each label to surrounding matrix material of the web or another label. As set forth above, the examiner agreed with appellant's grouping of the claims. Appellant correctly points out that the final rejection did not discuss the specific limitations of claim 17. Nor does the Examiner's Answer. By statute this Board serves as a Board of review, not as a de novo examining tribunal. 35 U.S.C. §

7(b) ("The [Board] shall . . . review adverse decisions of examiners upon applications for patents . . ."). Here, the examiner has not presented a position in regard to the patentability of claim 17 and the claims which depend therefrom which is amenable to a meaningful review. As a consequence, the rejection of claims 17, 21, and 24 is reversed.

5. Group 5

Claim 25 is representative of this group and requires that the labels are provided with exposed adhesive over the entire second face. Appellant argues that the teachings of Lane are contrary to what is recited in claim 25. Bane, not Lane, is relied upon to establish the obviousness of this portion of the claimed subject matter. Note that Bane teaches that the second face opposite of the face with the indicia is covered with an adhesive, albeit, two different adhesives (18) and (20). Claim 25 is not limited in a manner which requires that the adhesive which is to cover the second face is of a single type.

The rejection of claims 25, 26, 27, 28, 29, 32, and 33 is affirmed.

6. Group 6

Claim 30 requires that step b) is practiced to provide a plurality of label stock ties connecting each label to surrounding matrix material of the web or another label as in claim 17. For the reasons set forth above in regard to claim 17, the rejection of claims 30 and 31 is reversed.

To summarize, we affirm the rejection of claims 13-16, 18-20, 22-23, 25-29, and 32-33. We reverse the rejection of claims 17, 21, 24, 30, and 31.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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Administrative Patent Judge)	
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)	BOARD OF PATENT
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